



A Publication of the
Volume 8, No. 2 REAL ESTATE APPRAISERS BOARD November, 2001

Governor McCallum Appoints Herrera

Governor Scott McCallum announced on March 30, 2001, that he had appointed Oscar Herrera as the Secretary of the Department of Regulation and Licensing. Herrera has served sixteen years in state government including from 1999 to the time of his appointment as the Director of the Bureau of Minority Business Development in the Department of Commerce. From 1992 to 1998 he was the Director of the Wisconsin Coastal Management Program in the Department of Administration, and from 1985 to 1991 worked as a program and planning analyst with the Coastal Management Program. He was twice awarded the Department of Administration's Exceptional Performance Award.

Herrera was born and raised in Mexico City. He obtained a Bachelor's degree in Economics from the National University of Mexico and a Master's degree in Agricultural Economics from the University of Chapingo in Mexico. He also attended the University of Wisconsin-Madison where he obtained a Master's degree in Continuing and Vocational Education and completed Doctoral studies (Ph.D.) in Development.

THE WISCONSIN REAL ESTATE APPRAISERS BOARD

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Katharine Hildebrand, Bureau Director

Executive Staff:

Oscar Herrera, Secretary
William Conway, Deputy Secretary
Myra Shelton, Executive Assistant

Secretary Herrera Appoints Hildebrand

On June 1, 2001, Secretary Oscar Herrera appointed Katharine Hildebrand as the new Director of the Bureau of Business and Design Professions. Ms. Hildebrand comes to the Department of Regulation and Licensing from the Office of the Governor where she worked since 1999. She served on the Education Policy Team under former Governor Tommy Thompson, and became Education Policy Advisor for Governor Scott McCallum. Ms. Hildebrand grew up in Neenah, and earned her Bachelor's degree from Smith College in Massachusetts.

Board Member Information

Lill Hauschild (Kenosha) completed her eight-year term as a licensed appraiser professional board member. Secretary Herrera, on behalf of the Governor, commended her for her dedication and years of service to the Board and citizenry of Wisconsin. Members of the Board also thanked Lill for helping them to serve the Real Estate Appraisers of the State.

LaMarr Franklin (Glendale) has been reappointed by Governor McCallum as a public member to the Board. Mr. Franklin is owner and sales manager of Marrs Systems. His four-year term will expire on May 1, 2005.

Renewal of Real Estate Appraiser Credentials

All real estate licensed appraiser, certified residential appraiser and certified general appraiser credentials will expire on December 31, 2001. Persons who hold a

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valid real estate appraiser credential in October, 2001, will receive a renewal application by November 1, 2001.

Renewal applications received by the Department after the deadline date of December 31, 2001, will be assessed a \$25 late fee. Please notify the Department if there has been a change in name or address by letter, fax (608) 267-3816, or E-mail dorl@drl.state.wi.us

Failure to Renew

The Wisconsin Department of Regulation and Licensing renews the credentials of licensed professionals pursuant to Section 440.08 (1) of the Wisconsin Statutes. It is very important for you to provide the Department of Regulation and Licensing with any changes in address to ensure receiving renewal material. Failure to receive a notice of renewal does not relieve the credential holder from the obligation of having a current credential. According to RL 87.02 (1), Wis. Admin. Code, if a credential holder is late with his or her renewal, but is within five years after the renewal date, the credential shall be renewed

upon submitting proof of completion of 28 hours of continuing education as required under sec. RL 85.01 and paying the renewal fee and a late filing fee. On the other hand, RL 87.02 (2) reads:

"If applying 5 years or more after the renewal date, submitting proof of completion of 28 hours of continuing education as required under sec. RL 85.01, paying the renewal fees specified in sec. 440.08(2)(a)11., 11m. and 12. and (3), Stats., and submitting proof of one or more of the following, as determined by the department may ensure protection of public health, safety and welfare: (a) Successful completion of educational coursework. (b) Successful completion of the examination on Wisconsin statutes and rules or the national appraiser certification or licensure examination."

Appraisers who fail to renew their credentials in a timely manner may not perform real estate appraisals that involve "federally-related transactions".

CONTINUING EDUCATION

Every appraiser must complete 28 hours of continuing education in each biennial renewal period. At least 4 of these hours must include instruction in the professional standards and code of ethics applicable to appraisers. Continuing education hours may be applied to the continuing education requirements for the biennial renewal period in which the hours were acquired and may not be carried over to the next biennial renewal period. The current biennial renewal period will end on December 31, 2001. That is the deadline for obtaining the required education. If an appraiser does not complete the education on time, his or her credential will not be renewed and he or she will not be permitted to use certain titles.

A person who initially receives a credential during the biennial renewal period must complete the continuing education, even though he or she has held the credential for only four or five months, for example, before the deadline date.

Lists of Registrants

The Department has implemented 1999 Wisconsin Act 88, which limits the disclosure of personal identifiers by the Department on lists that contain the personal identifiers of 10 or more individuals. A "personal identifier" is a name, social security number, telephone number, street address, post office box number or 9-digit extended zip code. Thus, any form that the Department requires you to complete, in order to apply for or renew a credential, must include a place for you to declare that the personal identifiers collected on the form may not be disclosed on any list that the department or a credentialing board furnishes to another person. If you complete such a declaration the Department will not be permitted to disclose your personal identifiers on such lists. Exception: lists furnished to another state agency, a law enforcement agency or a federal governmental agency.

Reports of Disciplinary Decisions

The Department of Regulation and Licensing publishes the Report of Decisions on a monthly basis. The reports contain disciplinary orders issued by the professional regulatory boards and by the Department. You may access these disciplinary orders at the department's Web site. The address is: <http://www.drl.state.wi.us>.

The Report of Decisions includes final orders issued by the Department of Regulation and Licensing and the Boards attached to the Department. Decisions routinely included are decisions in cases initiated by the filing of a formal complaint or petition for summary suspension, disciplinary decisions reached through stipulation, cases dismissed without discipline, interim orders staying imposition of discipline, orders modifying limitations previously imposed and court decisions relating to orders issued by the Department or a Board. The reports do not include decisions to deny or grant

an initial credential application or renewal application unless the grant or denial followed a hearing and relates to a ground for discipline.

Reports are prepared each month and take about four weeks to process from the close of the reporting period. The decisions are indexed by year and month, and within each, by respondent and by profession.

Licensing Statistics

The number of active licensees as of October 18, 2001, is:

Licensed Appraiser	555
Certified Residential Appraiser	914
Certified General Appraiser	637

Historic Statistics

The following statistics reflect the number of initial credentials **issued** in 1991, 1996, and 2000.

The number of credentials issued in 1991:

Licensed Appraiser	1
Certified Residential Appraiser	311
Certified General Appraiser	152

The number of credentials issued in 1996:

Licensed Appraiser	33
Certified Residential Appraiser	39
Certified General Appraiser	69

The number of credentials issued in 2000:

Licensed Appraiser	70
Certified Residential Appraiser	39
Certified General Appraiser	65

Division of Enforcement

A critically important component of the role played by the Department of Regulation and Licensing (DRL) in overseeing professions subject to licensure and regulation is the Division of Enforcement (DOE), headed by Administrator Jack Temby.

The DOE is a large division comprised of attorneys, investigators and support staff. Their primary mission is to conduct investigations of complaints received by the department concerning the conduct of persons holding professional credentials or licenses issued by the department. In the most recently-completed biennium more than 4,400 complaints were received and processed by the division. When appropriate, complaints are resolved through mediation. However, if it appears there has been a violation of the laws enforced by the boards or department, formal disciplinary action may be commenced against the credential holder involved.

There are four distinct phases of the case handling process. They are as follows:

Intake Stage: This is the first stage in the case handling process. Cases are screened by screening panels to determine if an investigation is warranted. Cases that do not warrant investigation are quickly

closed. Cases that appear to have merit are identified for investigative action.

Investigation Stage: This is the next stage in the case handling process. Investigative staff gather necessary evidence and make contacts with witnesses as needed. The results of the investigation are discussed with a case advisor and a department attorney. Cases that do not warrant professional discipline are closed. Cases with violations proceed to the next stage for legal action.

Legal Action Stage: In this stage, department prosecuting attorneys, in conjunction with case advisors, review the results of the investigation and pursue disciplinary action when appropriate. Cases may be resolved by means of stipulated agreements, informal settlement conferences or letters of concern.

Hearing Stage: This is the last stage in the case handling process. This is a formal legal process. The department attorney litigates the case before an administrative law judge. The law judge makes a proposed decision which is reviewed by the licensing board. If a violation is found, discipline may be imposed. Disciplinary alternatives include a reprimand, limitation, suspension and revocation.

To file a complaint, you may contact the Division of Enforcement by calling (608) 266-7482 or (608) 266-3736; write to the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, WI 53708-8935, or download a form from the Internet at www.drl.state.wi.us.

USPAP Questions and Answers Bulletins

"USPAP Questions and Answers" are published by the Appraisal Standards Board (ASB) of the Appraisal Foundation. The answers do not establish new standards or interpret existing standards. The Q&A is issued to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of USPAP in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems.

More recent copies of the USPAP Q&A are available on the internet at: www.appraisalfoundation.org.

February 2001 (Vol. 3, No. 2)

Question #1: I was told that, because SR 2-5 was eliminated from the USPAP in 2001, a supervisor or employer who signs a report is no longer as responsible as the individual preparing the appraisal and that using a conditional label next to the signature of the supervisor or employer exempts that individual from adherence to USPAP. Is this true?

Response: No, it is not true, if the supervisor or employer is an appraiser. The references to "supervisor" and "employer" were removed; however, the new language added to the Comment to SR 2-3 (as well as similar language added to SR 3-2, 8-3 and 10-3) specifically requires that *"An appraiser who signs any part of the appraisal report, including a letter of transmittal, must also*

sign this certification.” It further states “Any appraiser(s) who signs a certification accepts full responsibility for all elements of the certification, for the assignment results, and for the contents of the appraisal report.”

Question #2: I am performing a review of a real property appraisal and my client has asked me to give my opinion of value, even if I agree with the value in the appraisal. Does my concurrence constitute an appraisal opinion? If so, what do I need to do to comply with USPAP?

Response: Yes, if you concur with the value in the report, it does constitute an appraisal by the reviewer. SR 3-1 (a) states: “If the purpose of the assignment includes the reviewer developing his or her own opinion of value about the subject property of the work under review, that opinion is an appraisal whether it:

- **concurs with the opinion of value in the work under review, as of the date of value in that work or a different date of value; or**
- **differs from the opinion of value in the work under review, as of the date of value in that work or a different date of value.” (bold added for emphasis)**

You should be careful to be sure that your scope of work clearly includes the requirement to develop your own opinion of value (i.e. an appraisal).

The Comment to SR 3-1 (c) shows the steps that must be taken when the purpose of an appraisal review includes the reviewer expressing his or her own opinion of value. One of these requirements is that you must satisfy Standard 1 (or Standard 7 for a personal property appraisal review). Specifically, whether you concur or disagree with the value in the appraisal being reviewed, you would extend to your development process those items in that appraisal that you conclude are credible and in compliance with Standard 1 in this case. This is accomplished on the basis of an extraordinary assumption. Those items not deemed to be credible or in compliance must be replaced with information or analysis by the reviewer.

Additional advice is contained in Advisory Opinion 20, “An Appraisal Review Assignment that Includes the Reviewer’s Own Opinion of Value”.

Question #3: A client has asked me to perform a review appraisal on a restricted use appraisal report. Can I do this and comply with USPAP?

Response: Yes, you can. However, in order to comply with USPAP, the review appraiser must have access to the original appraiser’s work file. The extremely brief reporting nature of many restricted use appraisal reports makes reviewing these reports feasible only if the workfile is also available. The 2001 USPAP states at SR 2-2 (c) (ix); “...*The review of a Restricted Use Appraisal Report in compliance with STANDARD 3 is not possible without the reviewer having benefit of the information retained in the workfile.*” Therefore, the appraiser performing the review must gain access to the file in order to accept such an assignment.

April 2001 (Vol. 3, No. 4)

Question #1: Frequently, the borrower in a lending transaction is provided with a copy of the appraisal report; and in some cases, the appraiser knows that the borrower will be receiving a copy of the appraisal report. When the appraiser is aware that the borrower or any other third party will receive a copy of the appraisal, does this make that third party an intended user?

Response: Not necessarily - USPAP defines the Intended User as: “the client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal

consulting report, by the appraiser on the basis of communication with the client at the time of the assignment.”

The intended use of an appraisal, appraisal review, or appraisal consulting assignment conclusions and opinions is **established by the client and agreed to by the appraiser**. It is crucial for the appraiser to know the identity of all intended users and of their requirements in order to correctly understand the intended use of the report.

Statement No. 9 (SMT-9) in USPAP provides further guidance on this issue, including in part: “A party receiving a report copy from the client does not, as a consequence, become a party to the appraiser-client relationship. Parties who receive a copy of an appraisal, appraisal review, or appraisal consulting report as a consequence of disclosure requirements applicable to an appraiser’s client do not become intended users of the report unless the client specifically identifies them at the time of the assignment.”

Question #2: What information must be retained in an appraiser’s workfile?

Response: An appraiser must prepare a work file for each appraisal, appraisal review, or appraisal consulting assignment. The appraiser’s assignment work file serves several purposes. As in many other professions, the discipline of enforcement by public agencies and peer review, together with one’s self-discipline and dedication of effort, serves to ensure performance of assignments in compliance with professional standards. In addition to facilitating enforcement, a work file aids the appraiser in handling questions from the client or an intended user subsequent to the date of the report.

An appraiser’s assignment work file preserves evidence of the appraiser’s consideration of all applicable data and statements required by USPAP and other information as may be required to support the appraiser’s opinions, conclusions, and, in the case of an appraisal consulting assignment, recommendations.

The work file must include –

- the name of the client and the identity, by name or type, of any other intended users;
- true copies of any written reports, documented on any type of media;
- summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser’s signed and dated certification; and
- all other data, information, or documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with the Ethics Rule and all other applicable Standards, or references to the location(s) of such other documentation.

Although the content and level of information detail required in the communication of assignment results is set forth in USPAP for written and oral reports, neither category of report is designed to provide all of the documentation necessary to comply with the work file requirements in the Record Keeping section of the ETHICS RULE. This is because the appraisal, appraisal review, or appraisal consulting assignment results are opinions and conclusions, which are a form of intellectual services, not a product, per se. Given this, complete documentation of the information an appraiser uses to develop assignment results would require replication of the appraiser’s life experience and education in work file documentation; a practical impossibility. It is for this reason that the Record Keeping section of the Ethics Rule contains the phrase “...; and all other data, information, and documentation necessary to

support the appraisers opinions and conclusions and to show compliance with this rule ..." (Emphasis by italics added).

The level of documentation in a work file will differ from assignment to assignment, and by the category of report (oral or written) used to communicate the assignment results. As the level of information detail in a written report diminishes, the amount of other documentation in the work file must increase to ensure the work file content, in total, meets the USPAP requirements.

For example, the Self-Contained Appraisal Report option for a real or personal property appraisal will contain a comprehensive level of information detail, but cannot, as a practical matter, contain the sum total of an appraiser's experience that went into making the judgments required in the assignment. However, taken together, the Self-Contained Appraisal Report and the other documentation required in the work file can provide support to show that those judgments were sound and resulted in compliance with USPAP.

Question #3: What is the difference between Negligence and Incompetence?

Response: Negligence is defined as a type of failure relative to a standard of care. It does not, by itself, imply incompetence but rather a lack of performance. Incompetence, on the other hand, implies a lack of knowledge and ability. In appraisal practice, incompetence is illustrated by a lack of judgment and an inability to distinguish what is relevant from what is irrelevant. It is often exhibited in scope of work decisions where the level of research and analysis in a given assignment either exceeds or falls short of what is required for credible results.

May 2001 (Vol. 3, No. 5)

Question #1: I have been asked by a client to appraise only the underlying land of a farm for the purpose of estimating the value of a conservation easement. Since the improvements are not being considered in the appraisal, does this assignment involve a hypothetical condition?

Response: No. This assignment does not involve a hypothetical condition for the subject of the assignment island only. The key here is defining the relevant characteristics of the subject of the appraisal. Standards Rule 1-2(e) requires the appraiser to, *"identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal"*. Standards Rule 1-2(e)(v) goes on to add, *"whether the subject property is a fractional interest, physical segment or partial holding"*. In addition, the Comment to Standards Rule 1-2(e)(v) states, *"An appraiser is not required to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding"*. It is clear that USPAP allows the appraiser to value a physical segment of a property, including the underlying land. Standards Rules 2-2(a), (b) or (c) (iii) require the appraiser, in the appraisal report, to *"describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment"*. For further guidance, please reference Advisory Opinion 23 (AO-23), which is entitled "Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment". It states, in part, that *"real estate can take many forms, such as land, land and improvements, improvements without the underlying land, or an infinite variety that involve one or more of the physical aspects of real estate"*.

Question #2: Why does USPAP require an appraiser to include a signed certification in the workfile and in all written reports?

Response: The certification is the same for all written reports covered by the Standard Rules. A signed certification is also

required to be included in the work file for any oral report given in compliance with USPAP. A signed certification evidences an appraiser's recognition of his or her ethical obligations. The elements of the certification that apply to development are listed as follows:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

The element of the certification that applies to development and reporting is:

- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice. The last two items have to do with disclosures relative to inspections and significant assistance.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
- No one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

Question #3: I recently went to work for an appraisal company where the owner of the company requires that the workfile be kept solely at the office. He will not allow the appraisers who work for his company to make their own copies and keep them outside of the office. Can I comply with this company's requirement and still conform to the Record Keeping section of the ETHICS RULE in USPAP?

Response: Yes, you can, provided the owner permits access to the file within the defined timeframe. The Record Keeping section of the ETHICS RULE states, in part; *"An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last, and have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile."* Given this qualification, it is not necessary that the appraiser have custody of the workfile but it is necessary that the custodian of the workfile make the workfile accessible and retrievable within the stated timeframe.

REGULATORY DIGEST

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New Telephone Directory

The Department of Regulation and Licensing has recently implemented an IVR Auto-Attendant Telephone System. This system may be accessed 24 hours a day for computerized licensing information. We ask for your patience as we perfect the system and remove some of the bugs we have encountered. You may continue to dial the following telephone number; **however, the extension numbers that had been published in past issues of the Regulatory Digest are no longer valid.** Please listen to the new menu for the new extension numbers. The number to dial is:

(608) 266-5511

Our Fax Number is: **(608) 267-3816**

Board Meeting Dates in 2002

February 27, April 24, June 26, August 28, October 30
All meetings are held at 1400 E. Washington Avenue, Madison WI, and are open to the public. Meetings are subject to cancellation without notice. Please call to confirm dates.

Visit the Department's Web Site

www.drl.state.wi.us

For our new "Online Verification of Credential Holders" click on the "Business and Professional License Lookup" button on the Department's home page.

Copies of the Regulatory Digest are on the Web.

Send comments to web@drl.state.wi.us

Wisconsin Statutes and Code

Copies of the "Statutes and Administrative Code for the Real Estate Appraisers Board" can be ordered from the Department. Include your name, address, county and a

check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated February, 2000.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes is not automatically provided.

SECTION 444.11, STATS., ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

Subscription Service

Bi-annual digest subscriptions are published for all credentials in the Department at a cost of \$2.11 each per year. CREDENTIAL HOLDERS RECEIVE THEIR REGULATORY DIGEST FREE OF CHARGE. Others may send the fee and this form to the address listed above.

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